

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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**BARRY TISBY, JR.,**

**Plaintiff,**

**v.**

**Case No. 14-CV-1315**

**KAREN BUTLER, DR. HAMMOND,  
SGT. J. SCHROEDER, LT. RAWSON,  
and REBECCA SWANSON,**

**Defendants.**

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**DECISION AND ORDER**

On January 6, 2015, I screened the amended complaint and determined that plaintiff could proceed on a deliberate indifference to a serious medical need claim based on allegations that defendants failed to treat his medical conditions (bipolar disorder, mood disorder, PTSD, chronic lower back pain, severe headaches) while he was confined at the Kenosha County Jail and Kenosha County Detention Center.<sup>1</sup> On February 23, 2015, plaintiff filed a second amended complaint alleging the same claim against four of the five defendants named in the first amended complaint. On February 24, 2015, plaintiff filed a third amended complaint.<sup>2</sup> This pleading appears to advance his medical care claim but

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<sup>1</sup> The amended complaint was filed as a separate case, *Tisby v. Butler*, Case No. 14-cv-1453-LA (E.D. Wis.). Because it presented the same claim as the original complaint in this case, I treated the pleading as an amended complaint and dismissed Case No. 14-cv-1453.

<sup>2</sup> Plaintiff filed petitions for leave to proceed in forma pauperis along his second and third amended complaints. I granted plaintiff's petition to proceed in forma pauperis on January 6, 2015. These recent petitions are redundant and I will deny them as moot.

it only names one defendant (Swanson) from the January 6, 2015, amended complaint.

The third amended complaint also adds a retaliation claim and four new defendants.

Plaintiff has not filed a motion to amend the complaint with regard to his second and third amended complaints. Thus, the January 6, 2015, amended complaint is the operative complaint in this action. See Civil L.R. 15 (E.D. Wis.). Civil Local Rule 15 provides in relevant part:

(a) Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.

(b) A motion to amend a pleading must state specifically what changes are sought by the proposed amendments. The proposed amended pleading must be filed as an attachment to the motion to amend.

Civil L.R. 15(a), (b) (E.D. Wis.).

If plaintiff wants to file an amended complaint, he may do so within twenty-one days of the date of this order. The amended complaint must bear the docket number assigned to this case and must be labeled "Fourth Amended Complaint." The fourth amended complaint will supersede all prior complaints. It must be complete in itself without reference to any prior complaint. See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84, 133 F.3d 1054, 1057 (7th Cir. 1998). If plaintiff files a fourth amended complaint, I will screen it pursuant to 28 U.S.C. § 1915A. If plaintiff does not file a fourth amended complaint within twenty-one days, the amended complaint (ECF No. 8) will remain the operative complaint in this action and all defendants must file a responsive pleading to that complaint.

Finally, defendants Dr. Hammond and Rebecca Swanson have filed a motion for summary judgment based on plaintiff's third amended complaint. Defendant Karen Butler,

who is represented by separate counsel, has also filed a motion for summary judgment based on plaintiff's third amended complaint. Based on the discussion herein, I will deny these motions as moot.

**THEREFORE, IT IS ORDERED** that plaintiff's motion for leave to proceed in forma pauperis (ECF No. 20) is **DENIED AS MOOT**.

**IT IS FURTHER ORDERED** that plaintiff's motion for leave to proceed in forma pauperis (ECF No. 23) is **DENIED AS MOOT**.

**IT IS FURTHER ORDERED** that plaintiff may file a motion to amend the complaint and a proposed fourth amended complaint within twenty-one days of the date of this order. If plaintiff does not do so, then the first amended complaint (ECF No. 8) will remain the operative complaint in this action and all defendants must file a responsive pleading to that complaint.

**IT IS FURTHER ORDERED** that defendants Dr. Hammond and Rebecca Swanson's motion for summary judgment (ECF No. 37) is **DENIED AS MOOT**.

**IT IS FURTHER ORDERED** that defendant Karen Butler's motion for summary judgment (ECF No. 44) is **DENIED AS MOOT**.

Dated at Milwaukee, Wisconsin, this 24th day of June, 2015.

s/ Lynn Adelman

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LYNN ADELMAN  
District Judge